



City of Milpitas



NOTICE OF REQUEST FOR PROPOSALS No. 4296 STREET RESURFACING 2020 & 2021

Notice is hereby given that proposals will be received until **May 17, 2019 at 2:00 PM** for:

STREET RESURFACING 2020 & 2021

The City of Milpitas (“City”) is seeking from a qualified proposer (“Proposer”) services to provide professional design services for the City’s annual street resurfacing project herein called “Street Resurfacing 2020” and “Street Resurfacing 2021”. The table below summarizes streets to be included in the street resurfacing projects. The Consultant shall assist the City with determining which streets should be scoped for which year based on constructability and available construction budget. The City currently envisions Great Mall Parkway to be scoped for 2020 construction with the remainder of the streets scoped for 2021 construction.

Street	Limit	Limit	Apprx. street length (ft)	Preliminary Treatment Per PMR*
Great Mall Pkwy.	880 On/Off Ramp	Montague Expwy.	7392	2” AC Overlay
Dempsey Rd.	S Park Victoria Dr.	Landess Ave.	3696	Slurry Seal and Digouts
N Hillview Dr.	Jacklin Rd.	Berryessa Creek	4752	Slurry Seal and Digouts
Sycamore Dr.	McCarthy Blvd.	Barber Ln.	2640	2” AC Overlay
Buckeye Dr.	Sycamore Dr.	Cottonwood Dr.	1584	2” AC Overlay
Buckeye Ct.	W end of Buckeye Ct.	Buckeye Dr.	300	2” AC Overlay
Cottonwood Dr.	McCarthy Blvd.	Barber Ln.	2112	2” AC Overlay

*Pavement Management Report recommendations shall be confirmed by the Consultant. Other recommendations are welcomed, but should be presented to the City as early as possible.

The scope of services, content of the proposal, and the selection process are described in the Request for Proposals (“RFP”). Interested parties may obtain copies of the RFP by visiting the City’s website: <http://www.ci.milpitas.ca.gov/milpitas/departments/finance/bidopportunities/>.

SUBMITTING THE PROPOSAL:

Interested Proposers shall submit three (3) hardcopies and one (1) electronic PDF copy of the proposal. Electronic copy must be on a CD or USB flash drive. Proposals must be delivered by the specified deadline date and time to be considered eligible for review. Send proposals to the following:

Attn: Fanny Yu
Engineering
455 E. Calaveras Blvd
Milpitas, CA 95035

License and Bonding. Proposer shall be licensed and bonded in accordance with industry practices, laws, rules and regulations governing the performance of services required in this RFP.

For more information regarding the RFP, please contact:

Fanny Yu, P.E.
Associate Civil Engineer
fyu@ci.milpitas.ca.gov



City of Milpitas

REQUEST FOR PROPOSALS

No. 4296

For

STREET RESURFACING 2020 & 2021

Date Issued: APRIL 23, 2019

Proposal Deadline: MAY 17, 2019 at 2:00 PM

Issued By: City of Milpitas
Purchasing Division
455 E. Calaveras Blvd.
Milpitas, CA 95035

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Schedule of Activities. The City reserves the right to amend the schedule below as necessary. All times referenced are in Pacific Time.

<u>Activity</u>	<u>Tentative Dates</u>
RFP released	April 23, 2019
Deadline for Submitting Questions (4:00 PM)	May 3, 2019
Submit questions via email: fyu@ci.milpitas.ca.gov	
Proposal Submission Deadline (2:00 PM)	May 17, 2019
Evaluation Committee Review	May-June
Contract Award (Tentative City Council Date)	June 18, 2019

PROJECT DESCRIPTION

RFP No. 4296 – STREET RESURFACING 2020 & 2021

The City of Milpitas (“City”) is seeking proposals from qualified proposers (“Proposer”) in response to this Request for Proposals (“RFP”) to provide professional design services for the City’s annual street resurfacing project herein called “Street Resurfacing 2020” and “Street Resurfacing 2021”. The table below summarizes streets to be included in the street resurfacing projects. The Consultant shall assist the City with determining which streets should be scoped for which year based on constructability and available construction budget. The City currently envisions Great Mall Parkway to be scoped for 2020 construction with the remainder of the streets scoped for 2021 construction.

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*Pavement Management Report recommendations shall be confirmed by the Consultant. Other recommendations are welcomed, but should be presented to the City as early as possible.

The scope of services (“Services”) sought under this RFP are set forth in more detail in **Exhibit “A,”** attached hereto and incorporated herein by this reference. The City reserves the right to select more than one Proposer as part of this RFP.

The term of the agreement will be from **June 18, 2019** to **December 31, 2020**, unless earlier terminated. The City reserves the right to review the successful Proposer’s performance at the end of each year and cancel all or part of the agreement. The City reserves the right to extend the agreement for four (4) one (1) year options exercisable at the City’s sole discretion, not to exceed five (5) years in total. The City may exercise the renewal option years by written notice to the successful Proposer by US Mail, fax or email, including a Purchase Order.

INSTRUCTIONS TO PROPOSERS

RFP No. 4296 – STREET RESURFACING 2020 & 2021

ADDENDA. Addenda issued pursuant to this RFP, if any, will be posted on the City's website <http://www.ci.milpitas.ca.gov/milpitas/departments/finance/bidopportunities/>. However, it is the sole responsibility of the Proposer to check the website and/or contact the Purchasing Agent listed in the Notice of Request for Proposals directly to determine whether any addenda has been issued.

Any proposal submitted that does not acknowledge each and every addenda issued may be considered non-responsive. Addenda, if any, must be acknowledged on the RFP Form in the space provided.

ANTI-DISCRIMINATION. It is the policy of the City that in connection with all Services performed under the Agreement; there will be no discrimination against any prospective or active employee engaged in the Services because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The Proposer agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1735. In addition, the Proposer agrees to require like compliance by any subcontractor employed to complete any Services under the Agreement.

AUTHORIZED SIGNATURES. Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the Services. Upon request of the City, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, their signature, and post office address must be listed in the proposal. If a firm or partnership makes the proposal, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be listed in the proposal. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation. Upon request of the City, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the proposal to execute contracts on behalf of the corporation.

AWARD OF CONTRACT. Award, if made, will be made to the Proposer offering the most advantageous proposal after consideration of all evaluation criteria ("Evaluation Criteria") set forth below. An Evaluation Committee will be established by the City. **Proposers not meeting the minimum requirements established in this RFP and not submitting all required documents may be deemed non-responsive to the RFP and thus may not be considered by the Evaluation Committee.** The Evaluation Committee will evaluate all proposals received in accordance with the Evaluation Criteria. The City shall not be obligated to accept the lowest priced proposal but will make an award in the best interests of the City after all factors have been evaluated.

EVALUATION CRITERIA	Weighted %
Cover Letter	0%
Company Profile	10%
Execution Plan (Scope of Services/Work)	30%
Personnel Assigned	20%
References	10%
Proposed Compensation	30%

The Evaluation Committee may also contact and evaluate the Proposer's and subcontractor's references; contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process.

Discussions may, at the City's sole option, be conducted with a short-list of responsive and responsible Proposers. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the RFP requirements. Each Proposer shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting discussions, the City will not disclose information derived from proposals submitted by competing Proposers. A notification of intent to award may be sent to any Proposer selected. The award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully, the City may negotiate a contract with the next highest scoring Proposer or withdraw the RFP. The City reserves the right to contract for services in the manner that most benefits the City including awarding more than one contract if desired. Once negotiations are successful, the Proposer will be recommended to the City Council for contract approval and the City Council has the final authority to approve or reject the contract award.

BACKGROUND CHECKS. All employees of the successful Proposers assigned to perform the Services and duties identified in this RFP must have a background security check (LifeScan or other background check as required by the City) conducted and passed as well as be a minimum of twenty-one (21) years of age.

BID PROTEST. Should any Proposer protest the award to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria, such protest must be made in writing to the Purchasing Agent. All protests must be filed and will be adjudicated in compliance with the City Municipal Code Section "I-2-3.19 –Bid Protest".

BUSINESS LICENSE. If the Services under this RFP include performing services or installation on City property, the successful Proposer must have a current City Business License. Inquiries regarding Business Licenses may be directed to the Department of Financial Services at 408-586-3100. Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

COMMUNICATION. Each Proposer must comply with the specified communication requirements. Any Proposer who communicates concerning this RFP with parties or via methods not provided for in this RFP, may be subject to disqualification. Such communication includes contact with City elected officials, non-designated staff, or any member of the Evaluation Committee regarding this RFP.

The City is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner, except by written addendum.

COMPENSATION/FEES. All proposals shall include the compensation proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Proposer's authorized representative. Fee proposals shall include everything necessary for the completion of all Services or otherwise fulfillment of the Agreement including but not limited to furnishing all labor, materials, equipment, tools, facilities and all management; overhead expenses and profit required to complete the Services in accordance with the Contract Documents, except as may be provided otherwise in the Contract Documents. Fee proposals must contain the information as outlined in the RFP.

COMPLIANCE WITH OR DEVIATION FROM RFP AND AGREEMENT. Proposer hereby agrees that the Services provided will meet all the requirements of the RFP including, without limitation, all Exhibits and in particular the Design Services (“Agreement”) attached hereto as Attachment C and incorporated herein by this reference. **It is the Proposers responsibility to review the Agreement and such attachments/exhibits to ensure that if the Proposer is awarded the contract, Proposer must be able to sign the contract as written with no changes. Proposer must also provide insurance documentation as stated in Exhibit D of the Agreement.** Any such exception taken to the RFP or Agreement may serve as a basis for rejection of the proposal as nonresponsive. Failure to comply with the requirements of this provision shall serve as a waiver of the Proposer’s right to challenge or otherwise take exception to any terms of the RFP or the Agreement. Submittal of a brochure, general list of terms and conditions, or other manufacturer literature is desirable but may not be a substitution for this requirement.

CONFLICT OF INTEREST. Pursuant to Government Code section 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any manner or degree with contract awarded from this RFP. Proposer certifies that to the best of its knowledge, no one who has or will have any financial interest in the contract awarded from this RFP is an officer or employee of the City. Through its submittal of a proposal, Proposer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will immediately notify the City if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

CONTRACT DOCUMENTS, EXAMINATION OF. It is the responsibility of the Proposer to carefully and thoroughly examine and be familiar with the RFP, all attached exhibits including the Agreement, responses to questions, and addenda, if any, (hereinafter collectively referred to as “Contract Documents”). Proposer shall satisfy themselves as to the character, quantity, and quality of the Services to be performed and materials, labor, supervision, equipment, and appurtenances necessary to perform the Services as specified by the Contract Documents. The failure or neglect of the Proposer to examine the Contract Documents shall in no way relieve them from any obligations with respect to the RFP or Agreement. The submission of a proposal shall constitute an acknowledgment upon which the City may rely that the Proposer has thoroughly examined and is familiar with the Contract Documents. The failure or neglect of a Proposer to receive or examine any of the Contract Documents shall in no way relieve them from any obligations with respect to the proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of Contract Documents.

DEFINITION OF TERMS. For the purposes of this RFP, the following definitions will be used:

- a. **Contractor/successful Contractor/successful Proposer.** The terms “Contractor,” “successful Contractor” and “successful Proposer” refers to the party entering into a contract with the City as a result of this RFP.
- b. **Evaluation Committee.** An independent committee established by the City to review, evaluate, and score the proposals, and to recommend award to the Proposer that submitted the proposal determined by the committee to be in the best interest of the City.
- c. **May.** Indicates something that is not mandatory but permissible.
- d. **Must/Should.** Indicates a mandatory requirement. A proposal that fails to meet a mandatory requirement may be deemed non-responsive and not be considered for award.
- e. **Proposer.** The person or firm making a legally binding offer.
- f. **Proposal.** The offer submitted by the Proposer.
- g. **RFP.** Acronym for Request for Proposal; same as Solicitation and Contract Documents.
- h. **Should.** Indicates something that is recommended but not mandatory. Failure to do what "should" be done will not result in rejection of your proposal.
- i. **Submittal Deadline.** The date and time on or before all proposals must be submitted.

DISQUALIFICATION OF PROPOSER. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals from participants in such collusion. Proposers shall submit as part of their proposal documents the completed Non-Collusion Declaration provided herein.

DOCUMENTS TO BE RETURNED WITH PROPOSAL. Failure to completely execute and submit the required documents before the Submittal Deadline may render a proposal nonresponsive. **The documents that must be returned by the Submittal Deadline are listed on the form entitled "List of Documents to be Returned with Proposal" and attached hereto on page 13.**

EXECUTION OF AGREEMENT. The Contractor shall execute the Agreement in substantially the form provided in this RFP. A copy of the Agreement is attached hereto as **Attachment C** and incorporated herein by this reference. The Agreement shall include, among other things, this RFP, any addenda, and the relevant scope and pricing terms under the Contractor's proposal. Contractor shall sign all necessary documents and submit all required bonds (if applicable) and evidences of insurance within ten (10) days after personal delivery of the Notice to Proceed or within fifteen (15) days after such Notice of Proceed has been deposited in the United States mail. One copy of the Agreement will be returned to the Contractor after the City executes the Agreement. In case of failure of the Contractor to execute and return the Agreement and all required documents within the time allowed, the City may, at its option, consider that the Proposer has abandoned the Agreement. After the Agreement has been executed, including the insurance documents, certificates, and bonds, if applicable, Contractor agrees to commence Services within ten (10) working days after the date of the Notice to Proceed.

EXPERIENCE AND COMPETENCE. The successful Proposer shall be skilled and regularly engaged in the general class or type of work called for under the Agreement and shall also have no less than **five (5)** years of experience in the magnitude and character of the Services proposed. It is the intention of the City to award a contract to a Proposer who furnishes satisfactory evidence that he or she has the requisite experience, ability, sufficient capital, and facilities to enable them to prosecute the Services successfully and properly and to complete it within the time specified in the Agreement. To determine the degree of responsibility to be credited to the Proposer, the City will weigh any evidence that the Proposer has performed satisfactorily other contracts of like nature, magnitude, and comparable difficulty. In selecting the proposal most advantageous to the City, consideration will be given to the general competency of the Proposer for the performance of the Services specified in the RFP. To this end, each Proposal shall be supported by a statement of the Proposer's experience on the form entitled "References," which is a part of the RFP.

Contractor's personnel assigned to the contract awarded from this RFP shall each have a minimum of **five (5)** years of training and experience related to services of similar scope to this RFP. Contractor will ensure that a full-time employee is assigned to the job as project manager for the duration of the Agreement and that he or she speaks English and has **three (3)** years of supervision experience in work of similar scope to this RFP. These minimum qualifications shall be maintained throughout the Agreement duration.

FORCE MAJEURE. If execution of the Agreement shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to

acts of God, war, acts of a public enemy, and acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FORMATION OF CONTRACT. Proposer's signed proposal and City's acceptance shall constitute a binding contract.

INFORMED PROPOSER. Each Proposer is expected to fully inform themselves as to the conditions, requirements, and specifications of the RFP before submitting proposals. Failure to do so will be at Proposer's own risk, and they cannot secure relief on the plea of error.

INSURANCE REQUIREMENTS. Within ten (10) calendar days of award of the contract, the successful Proposer must furnish to the City with a Certificate of Insurance and accompany endorsements proving coverage, as specified in the Agreement attached as Exhibit B. Failure to furnish the required certificates within the time allowed may result in forfeiture of the Agreement.

INTERPRETATION OF CONTRACT DOCUMENTS. If any person is in doubt as to the true meaning of any part of the RFP or finds discrepancies or omissions in the RFP, they may submit a written request for an interpretation or correction through the Public Purchase website no later than the deadline for questions.

When the City considers interpretations necessary, interpretations will be in the form of an addendum to the RFP, and when issued, will be posted on the Public Purchase website. All such addenda shall become a part of the Agreement. Oral and other interpretations or clarifications shall be without legal or contractual effect. It is the responsibility of each Proposer, including any Proposer who obtained a RFP from anyone other than the Public Purchase, to check the website for addenda prior to submitting any proposal.

**The deadline for submitting questions related to this RFP is:
May 2, 2019 at 4:00 PM
Submit questions via email: fyu@ci.milpitas.ca.gov**

Any proposal submitted that does not acknowledge each and every question issued may be considered non-responsive. Questions, if any, must be acknowledged on the RFP Form in the space provided.

LICENSES. Proposer represents that it is duly licensed and experienced in providing services similar to those being performed under this RFP and that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that it is familiar with the plans of City.

NOMENCLATURES. The terms successful Proposer, successful Contractor, and Contractor may be used interchangeably in this RFP and shall refer exclusively to the Proposer with whom the City enters into a contract as a result of this RFP.

NON-COLLUSION DECLARATION. Each Proposer is required to submit a signed copy of the Non-Collusion Declaration with its proposal.

WAGE THEFT PREVENTION. Proposers are required to submit a certification disclosing whether the Proposer or any of its proposed subcontractors has been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage

Ordinance, within the past five (5) years from the bid submission deadline. A copy of the Wage Theft Certification is attached hereto and must be completed and submitted as part of the proposal.

OFFERS OF MORE THAN ONE PRICE. Proposer is NOT allowed to submit more than one proposal.

PREVAILING WAGES. Proposer shall take cognizance of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations. Copies of the State of California wage schedules are available for review at <https://www.dir.ca.gov/oprl/>. The Contractor and all subcontractor(s) under him or her, shall comply with all applicable Prevailing Wage Laws, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Agreement, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors. It shall be the Proposer's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this RFP and applicable law in its proposal.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Contractor and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

PRICE DISCREPANCIES. In the event that there are unit price items in a proposal schedule and the "amount" indicated for a unit price of an item does not equal the product of the unit price and quantity listed, the unit price shall govern, and the amount will be corrected accordingly. If there is more than one item in a proposal schedule, and the total indicated for the schedule does not agree with the sum of prices of the individual items, the prices given for the individual items shall govern, and the total for the schedule will be corrected accordingly. The Proposer will be bound by said corrections.

PROPOSAL CONTENT. (See Narrative Proposal) Proposer must describe in detail how they will meet the requirements of this RFP, and may provide additional related information with its proposal. **The proposal shall be presented in a format that numerically corresponds to the numbered sections outlined in the Narrative Proposal – Part 1. Responses to each section should be labeled to indicate which item is being addressed.** Proposals shall be straightforward and concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. If a complete response cannot be provided without referencing supporting documentation, you must provide such documentation with the proposal indicating where the supplemental information can be found.

The City is not liable for any costs incurred by Proposers before entering into a formal Agreement. The costs of developing the proposals, presentations, negotiations and any interview or any other such expenses incurred by any Proposer in responding to the RFP are entirely the responsibility of the Proposer and shall not be reimbursed in any manner by the City.

PROPOSAL MODIFICATIONS. Any Proposer who wishes to make modifications to a proposal already received by the City must withdraw its proposal in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this RFP (see Withdrawal of Proposal). All modifications must be made in ink,

properly initialed by Proposer's authorized representative, executed, and submitted in accordance with the terms and conditions of this RFP. It is the responsibility of the Proposer to ensure that modified or withdrawn proposals are resubmitted before the Submittal Deadline.

PROPOSAL PRICES AND NOTATIONS. All prices and notations must be in ink or typewritten. Prices shall be stated in units and offers made separately on each item. In case of conflict between unit prices and extended prices, unit prices will govern. Where there is a conflict between words and figures, words will govern.

PROPOSAL RESULTS. Proposals are downloaded from the Public Purchase website. A proposal results tabulation with the names of Proposers will be posted on the Purchasing page of the City website after contract award, if any. The City reserves the right to postpone the Submittal Deadline and opening of proposals any time before the date and time announced in the RFP or subsequent addenda.

PROPRIETARY INFORMATION. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFP shall be held confidential by Authority and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 6250 *et seq.*) until after either City and the successful proposer have completed negotiations and entered into an Agreement or City has rejected all proposals. All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act. Furthermore, the City will have no liability to the Proposer or other party as a result of any public disclosure of any proposal or the Agreement.

If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City is not in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

RECYCLED PRODUCT PROCUREMENT. The City is committed to the conservation and protection of state and local resources, therefore:

- a. For all paper materials of any kind delivered to the City, by a contractor, supplier, or consultant, whether in the form of a product such as a cup or a deliverable such as a report, shall use recycled paper that bears an imprint identifying the recycled content of the paper as not less than the 30% post-consumer fiber as specified in Section 12209 of the Public Contract Code. A product such as a cup may have the identifying logo and/or language on the packaging, while a deliverable such as a report shall have the identifying logo on the first page. This shall apply to all paper materials delivered to the city whenever practicable.
- b. Contractors and consultants shall use both sides of paper sheets whenever practicable.

REJECTION OF PROPOSALS AND WAIVER OF INFORMALITIES. Issuance of this RFP and receipt of proposals does not commit the City to award a contract. The City reserves the right to waive any irregularities and to reject any proposals, all proposals, or any part of any proposal presented and re-advertise for proposals. The City reserves the right to cancel the RFP and make no award. The City reserves the right to reject the proposal of any Proposer who previously failed to perform adequately for the City or any other governmental agency. The

City expressly reserves the right to reject the proposal of any Proposer who is in default on the payment of taxes, licenses, or other monies due to the City.

RULES FOR SUBMITTING PROPOSALS.

- a. **Submittal Deadline.** Proposals must be uploaded to the Public Purchase website by the Submittal Deadline shown in this RFP and any subsequent addenda to this RFP.
- b. **Responsibility.** Proposer is solely responsible for ensuring its proposal is successfully delivered in accordance with the RFP requirements before the Submittal Deadline. The City shall not be responsible for any delays in transmission errors or delays.
- c. **Extension of Submittal Deadline.** The City reserves the right to extend the Submittal Deadline when it is in the best interest of the City.
- d. **Forms.** To be considered for the award, each proposal shall be made on forms furnished by the City in this RFP.
- e. **Late Proposals.** The Submittal Deadline is firm. Proposals will not be accepted after the Submittal Deadline.
- f. **Signature.** To be considered for the award, each proposal shall be signed by an authorized representative of the Proposer.

SITE EXAMINATION. If applicable or otherwise required by City, Proposer may visit the City and its physical facilities and determine the local conditions which may in any way affect the performance of the Services; familiarize themselves with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the Services; make such investigations, as it may deem necessary for performance of the Services at its proposal price within the terms of RFP; and correlate its observations, investigations, and determinations with the requirements of the RFP.

SUBMITTAL METHOD. Proposals must be submitted electronically through the Public Purchase website at www.publicpurchase.com.

TAXES. Successful Proposer shall pay all federal, state and local taxes, levies, duties, and assessments of every nature due in connection with any Services under the Agreement and shall indemnify and hold harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions. Proposal prices shall include said taxes.

TERMS OF THE OFFER. The City reserves the right to negotiate final contract terms with any Proposer selected. Proposer understands and acknowledges that the representations above are material and important, and will be relied on by the City in the evaluation of the proposal. Proposer misrepresentation shall be treated as fraudulent concealment from the City of the facts relating to the proposal.

WITHDRAWAL OF PROPOSAL. Following the Submittal Deadline, Proposer may not withdraw its proposal for a period of ninety (90) calendar days from the date of opening and the proposal must remain open and firm. At no time may the successful Proposer(s) withdraw their proposal. Proposer's authorized representative may withdraw proposals through the Public Purchase website prior to the Submittal Deadline.

LIST OF DOCUMENTS TO BE RETURNED WITH PROPOSAL

RFP No. 4296 – STREET RESURFACING 2020 & 2021

REQUIRED PROPOSAL DOCUMENTS TO BE RETURNED	RFP page numbers (for reference)	INCLUDED (Indicate Yes or No for items 1 through 9)	IF NOT, EXPLAIN
1. This form	13		
2. Narrative Proposal (Including Company Profile and Execution Plan)	14		
3. Certification of Proposer	16		
4. Non-Collusion Declaration	17		
5. Proposer's Statement Regarding Insurance Coverage	18		
6. Proposer's Statement Regarding Contract Agreement	19		
7. Worker's Compensation Insurance Certificate	20		
8. Nondiscriminatory Employment Certificate	21		
9. Wage Theft Certification	24		
10. References	25		

Failure to complete, sign (where required), and return the above documents with your proposal may render it nonresponsive and thus be rejected by the City.

ACKNOWLEDGMENT

PROPOSER NAME (Company Name): _____

PRINT NAME AND TITLE OF AUTHORIZED OFFICIAL OFFERING THE PROPOSAL:

AUTHORIZED SIGNATURE: _____ Date: _____

NARRATIVE PROPOSAL – DO NOT RETURN THIS FORM

RFP No. 4296 – STREET RESURFACING 2020 & 2021

NARRATIVE PROPOSAL FORMAT – Use this as a guide to write your proposal.

In order to be fully compliant with the requirements of the RFP, please follow this format exactly siting each heading (Cover Letter, Company Profile, etc.). Proposer may include any information they feel is relevant to the proposal, but at a minimum include each and every numbered and lettered item below in the written narrative proposal.

Once submitted, the proposal including any supplementary documents become the property of the City.

1. **Cover Letter** – The cover letter shall address items a through h:

- a. The cover letter is to introduce the Proposer and should contain the names, title, address, and telephone numbers of the individual(s) with authority to bind the Proposer during the period that the proposals are being evaluated.
- b. The cover letter shall identify the legal form of the firm, and if a corporation, shall identify in which state the firm was incorporated.
- c. The cover letter shall be signed by a principal of the firm or other person authorized to act on behalf of the firm.
- d. The proposal shall identify the location of the firm's home office, and whether or not the firm has management staff in the San Jose/Oakland/San Francisco area.
- e. The number of employees.
- f. Name, address, and telephone number of the Proposer's point of contact for a contract resulting from this RFP.
- g. Length of time Proposer has been providing services described in this RFP. Please provide a brief description.

h.) Proposer must include in their cover letter a complete disclosure of any alleged significant *prior or ongoing* contract failures, any civil or criminal litigation or investigation *pending* which involves the Proposer or in which the Proposer has been judged guilty or liable. If “None” proposer shall state as follows:

“Proposer has no prior or ongoing contract failures, civil or criminal litigation or pending investigation.”

Failure to comply with this provision will disqualify any proposal.

2. **Company Profile** – The Proposer shall provide a general description of the firm, including a brief history and its experience in providing similar services as those requested in this RFP. The City will only consider submittals from Proposers whose proposed team can demonstrate the following background and capabilities:

- a. A long term, well established entity in the State of California;
- b. Contractually commit that the team defined in the proposal will perform the Services under the Agreement should it be chosen.

Each submittal should address the following areas:

- a. Describe your firm's capabilities, experience, and approach to implementing and performing maintenance services for similar agencies, including the number of years your firm has performed these services. Included shall be a description of at least three (3) projects of similar or greater complexity that your firm has completed within the past five (5) years. Include the following information:
 - Project description
 - Project Size (number of service sites/frequency, etc.)
 - Client reference name and contact email and telephone number
 - b. Provide an organizational chart showing the proposed team for this project. Also, include resumes for key individuals showing their experience with these types of projects.
 - c. Provide a description of how your firm is uniquely qualified for this project.
 - d. Provide a detailed description of your approach for pricing on this type of project. Include your total markup on subcontractors and material showing a breakout of overhead and profit.
 - e. Provide a schedule of how the Proposer proposes to complete the Services in accordance with the requirements of the Agreement. Provide an outline of key milestones including, but not limited to, coordination meetings, service protocols, scheduling and rescheduling procedures and staff coverage;
 - f. A statement that discloses any past, ongoing or potential conflicts of interest that the firm may have or may develop as a result of performing the Services specified in this RFP.
3. **Execution Plan** – The plan represents the Proposer's offer of Services to the City. The proposed execution plan must include a detailed work plan describing how the Proposer will meet the project objective in the most cost-effective and timely manner. This section is to provide a detailed explanation of the Proposer's approach in performing the Services described in the RFP – **SEE EXHIBIT A – SCOPE OF SERVICES**.
4. **Personnel Assigned** – Include all of the following: (Answer items a through d)
- a. A project manager authorized to act on behalf of the firm must be designated and shall be the principal contact for the City.
 - b. Identify any individuals expected to have backup responsibilities.
 - c. Provide a brief resume/background of the specific individuals assigned to this project; resumes should not exceed one paragraph per person.
 - d. The proposal shall state that no changes in key personnel are to be made without written consent of the City.

If, and when the City interviews prospective firms, such persons shall be in attendance and materially contribute to the discussion.

5. **References** – This section shall consist of a list of three references for work of a similar nature as that required by the City, performed within the last three years. Proposers are directed to use the attached References form to list references.
6. **Proposed Compensation** – This section shall consist of a detailed outline of Proposer's proposed compensation for Services outlined in Exhibit A – Scope of Services.

CERTIFICATION OF PROPOSER

RFP No. 4296 – STREET RESURFACING 2020 & 2021

By listing the Addenda Numbers below and checking the box next to “ADDENDA” below, Proposer acknowledges receipt of Addenda Number (s) __, __, __, __, from the City’s website pertaining to this RFP (if any). ADDENDA: ☐

I/We (Insert Company Name) _____ agree to provide the Services as stipulated in this RFP and pricing as indicated in the Proposal. I/We further agree that the below; undersigned is authorized by the (Insert Company Name) _____ to bind the company in contract for the specified contract term. All exceptions (if applicable) are attached as an addendum to this pricing proposal. I understand that the City may not accept exceptions to the RFP. I/We further agree that if awarded the contract, to abide the terms and conditions of the contract and not to materially modify such terms without expressed written consent of the City Purchasing Agent.

Company Name: _____ Legal Entity Type: _____

Authorized Contact Title: _____ Print Contact Name: _____

Contact Signature: _____ Contact Email Address: _____

Contact Telephone: _____ Contact Fax: _____

Proposer’s Address: _____ City, State and ZIP Code: _____

Taxpayer I.D. No.: _____ Business License No.: _____

DIR Registration No. (if applicable): _____

NON-COLLUSION DECLARATION

RFP No. 4296 – STREET RESURFACING 2020 & 2021

The undersigned declares:

I am the _____ of _____, the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from bidding. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract. All statements contained in the proposal are true. The Proposer has not, directly or indirectly, submitted its proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Name of Proposer _____

Signature _____

Name _____

Title _____

PROPOSER'S STATEMENT REGARDING INSURANCE COVERAGE

RFP No. 4296 – STREET RESURFACING 2020 & 2021

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the RFP. Should the Proposer be awarded the contract for the Services, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City as additional insured for the Services specified.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name and Title of Authorized Representative

Date of Signing

PROPOSER'S STATEMENT REGARDING CONTRACT AGREEMENT

RFP No. 4296 – STREET RESURFACING 2020 & 2021

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the sample DESIGN SERVICES AGREEMENT in the RFP. Should the Proposer be awarded the contract for the Services, Proposer further certifies that the Proposer can execute the contract as is with no proposed changes to any contract language.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

WORKER'S COMPENSATION INSURANCE CERTIFICATION

RFP No. 4296 – STREET RESURFACING 2020 & 2021

The Proposer shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name and Title of Authorized Representative

Date of Signing

NONDISCRIMINATORY EMPLOYMENT CERTIFICATE

RFP No. 4296 – STREET RESURFACING 2020 & 2021

Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all RFP specifications and contracts of the City for the construction, repair, or improvement of public works.

Contents of Certificate

The Proposer's obligation for nondiscriminatory employment is as follows:

If awarded the contract and in performing the Services under the Agreement, the Proposer agrees as follows:

1. The Proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

2. The Proposer will take positive action or ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

3. The Proposer will, in all solicitations or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

4. The Proposer will send to each labor union or representative of workers, with which the Proposer has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or workers' representative of the Proposer's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Proposer will permit access to the Proposer's records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices Commission, or any other appropriate Agency of the State designated by the City for the purposes of investigation

to ascertain compliance with the Proposer's obligation for nondiscriminatory employment provisions of the Agreement, or Fair Employment Practices statute.

6. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Proposer may submit quotes, the Proposer is a "disqualified proposer" for being "non-responsible".

7. The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Proposer has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

8. Upon receipt of any such written notice, the City shall notify the Proposer that unless he or she demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he or she shall be declared a "disqualified proposer" until such time as the Proposer can demonstrate that he or she has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

9. Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

10. In addition to any other remedy or action provided by law or the terms of this contract, the Proposer agrees that, should the Council determine after a public hearing duly noticed to the Proposer that the Proposer has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination, the Proposer shall, as a penalty to the City, forfeit a penalty of Twenty-Five Dollars and Zero Cents (\$25.00) for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such monies shall be recovered from the Proposer. The City may deduct any such penalties from any monies due to the Proposer from the City.

11. The Proposer certifies to the City that he or she has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:
 - a. The Proposer shall notify all supervisors and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.
 - b. The Proposer shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.
 - c. The Proposer shall file a basic compliance report as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the workforce and who has the responsibility for determining whom to hire, or whether or not to hire.
 - d. The Proposer shall notify the City of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.
12. Nothing contained in this Proposer's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

13. The Proposer certifies to the City that the Proposer will comply with the following requirements with regard to all subcontractors and suppliers:
 - a. The Proposer will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.
 - b. The Proposer will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Proposer becomes involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction by the City, the Proposer may request the City to enter into such litigation to protect the interests of the City.

Signature of Proposer's Authorized Representative

Name and Title of Authorized Representative

Date of Signing

WAGE THEFT CERTIFICATION

RFP No. 4296 – STREET RESURFACING 2020 & 2021

The Proposer certifies subject to penalty for perjury that the option checked below relating to the Proposer and its subcontractors' status in regard to wage theft is true and correct:

- ☐ Neither the Proposer nor any of its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline.
- ☐ The Proposer or its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline. For each violation, the Proposer shall provide a copy of (i) the final court order and/or final administrative decision/action; and (ii) documents demonstrating either that the order/decision/action has been fully satisfied, or if the order/decision/action has not been fully satisfied, documents evidencing a payment or other alternative plan approved by the court/government agency to satisfy the order/decision/action and proof that the Proposer or its subcontractors are in compliance with that plan as of the bid submission deadline.
- ☐ The City has exempted the Proposer from the requirements of the City of Milpitas Wage Theft Procurement Policy.

Signature: _____

Printed Name: _____

Title: _____

Firm Name: _____

Date: _____

REFERENCES

RFP No. 4296 – STREET RESURFACING 2020 & 2021

Proposer: _____
(Legal Name of Entity Submitting Proposal)

List three references for work of a similar nature to the Services performed within the last three years.

1.	_____ Name of Agency	_____ Agency Address
	_____ Contact Name	_____ Contact Title
	_____ Contact Telephone	_____ Contact Email Address
	_____ Contract Period	_____ Contract Amount
	_____ Description of Services Performed	
2.	_____ Name of Agency	_____ Agency Address
	_____ Contact Name	_____ Contact Title
	_____ Contact Telephone	_____ Contact Email Address
	_____ Contract Period	_____ Contract Amount
	_____ Description of Services Performed	
3.	_____ Name of Agency	_____ Agency Address
	_____ Contact Name	_____ Contact Title
	_____ Contact Telephone	_____ Contact Email Address
	_____ Contract Period	_____ Contract Amount
	_____ Description of Services Performed	

I hereby certify that the Proposer performed the work listed above.

Signature of Proposer

Name

Date

ATTACHMENT A – SCOPE OF SERVICES

RFP No. 4296 – STREET RESURFACING 2020 & 2021

Street resurfacing 2020 & 2021 Scope of Services

I. Project Description

The City of Milpitas (City) is seeking an experienced consulting firm to provide professional design services for the City's annual street resurfacing projects herein called "Street Resurfacing 2020" and "Street Resurfacing 2021". The table below summarizes streets to be included in the street resurfacing projects. The Consultant shall assist the City with determining which streets should be scoped for which year based on constructability and available construction budget. The City currently envisions Great Mall Parkway to be scoped for 2020 construction with the remainder of the streets scoped for 2021 construction.

Street	Limit	Limit	Apprx. street length (ft)	Preliminary Treatment Per PMR*
Great Mall Pkwy.	880 On/Off Ramp	Montague Expwy.	7392	2" AC Overlay
Dempsey Rd.	S Park Victoria Dr.	Landess Ave.	3696	Slurry Seal and Digouts
N Hillview Dr.	Jacklin Rd.	Berryessa Creek	4752	Slurry Seal and Digouts
Sycamore Dr.	McCarthy Blvd.	Barber Ln.	2640	2" AC Overlay
Buckeye Dr.	Sycamore Dr.	Cottonwood Dr.	1584	2" AC Overlay
Buckeye Ct.	W end of Buckeye Ct.	Buckeye Dr.	300	2" AC Overlay
Cottonwood Dr.	McCarthy Blvd.	Barber Ln.	2112	2" AC Overlay

*Pavement Management Report recommendations shall be confirmed by the Consultant. Other recommendations are welcomed, but should be presented to the City as early as possible.

The projects will include but not limited to:

- Improvement to existing AC pavement including localized repair (digouts) of failed AC pavement.
 - Consultant will assess proposed streets and provide recommendation of proposed treatments, with consideration to construction impacts
 - Consultant shall note locations with low curb heights. These areas may require mill and overlay.
- Evaluate and identify existing curb ramps that do not comply with ADA requirements.
 - Consultant will perform topographic survey to determine grading and slope in order to comply with ADA requirements.
- Remove and replace existing damaged sidewalk, driveways, and curb and gutter.
- Adjustment of appurtenances affected by work
- Striping, installation of pavement markers, new bike lanes, or any necessary signage
- Replace in-ground detector loops at signalized intersections affected as a result of resurfacing work.
- Install traffic signal video detection where it currently does not exist
- Install buffer bike lanes and green bike lanes

Streets listed above qualify for MTC's OBAG2 grant in the amount of \$1,609,000 for the construction phase. The federal funding is programmed for construction for the 2019/2020 fiscal year. Request for authorization for construction must be submitted between October 1, 2019 and September 19, 2020 in order to maintain good standing. Only the Street Resurfacing 2020 project is considered eligible for federal funding. The City will coordinate these efforts and will direct the Consultant to provide the necessary information.

Construction budget for the Street Resurfacing 2020 project is currently estimated to be \$2.7 million and

construction budget for the Street Resurfacing 2021 project is currently estimated to be \$4.9 million.

Existing Signal Locations (all video detection unless otherwise noted):

- Hillview Dr. and Jacklin Rd.
- Great Mall Pkwy. and Thompson St. (loops)
- Great Mall Pkwy. and Abel St.
- Great Mall Pkwy. and Main St.
- Great Mall Pkwy. and McCandless Dr.
- Great Mall Pkwy. and Mustang Dr./Centre Pointe Dr.
- Great Mall Pkwy. and Montague Expwy. (County of Santa Clara)
- Dempsey Rd. and Yosemite Dr.
- Dempsey Rd. and Landess Ave. (loops)
- Sycamore Dr. and McCarthy Blvd.
- Cottonwood Dr. and McCarthy Blvd.

Montague Expressway is under the jurisdiction of the County of Santa Clara. Any work required on Montague Expressway will require the review and approval of the County of Santa Clara. Consultant shall prepare plans for permit application, submittal, and review.

The Consultant shall design and provide two separate PS&E packages for the Street Resurfacing 2020 and Street Resurfacing 2021. Design work for both of these projects is expected to occur concurrently with the Street Resurfacing 2020 following a more stringent schedule in order to qualify for federal funds.

II. Description of Required Services

Professional design services for the street resurfacing projects shall include design development and coordination with the City staff to ensure that all of the City's goals and needs are met. The consultant shall prepare the final plans, specifications, and estimates (PS&E) and support the City during the bid, award, and construction phases.

Applicant is encouraged to revise and add to the Scope of Services to identify any supplemental tasks deemed necessary, and to recommend any approach that may enhance the project performance and/or reduce costs.

PROJECT ADMINISTRATION AND COORDINATION

- A. Upon receipt of a written Notice to Proceed from the City of Milpitas, CONSULTANT shall conduct a kick-off meeting with the City to review the scope of the project, project schedule, and confirm deliverables. Consultant shall be responsible to provide an agenda and a revised schedule (if needed) for the meeting.
- B. CONSULTANT shall prepare project schedule that include tasks, subtasks, design development milestones, critical path designation, and allotment for progress meetings.
- C. CONSULTANT shall perform QA/QC on all documents submitted for City review. CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality. CONSULTANT shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:
 - Design and calculations are independently checked, corrected and back checked by the CONSULTANT;

- When different disciplines are involved, means to assure design conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.
- CONSULTANT will provide any documentation of QA/QC when requested by the City. CONSULTANT will also provide methods for calculations when requested by the City.

CITY reviews of these documents shall not be considered part of the QC/QA program. QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

- D. CONSULTANT shall be responsible for preparing meeting agenda and meeting minutes for each meeting.
- E. CONSULTANT shall assist the City staff secure all permits required for the project. CONSULTANT shall provide the CITY of any records of applications, coordination or correspondence and submissions required for permitting.
- F. CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary permits and service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate all utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule. CONSULTANT shall provide the CITY of any records of applications, coordination or correspondence, and submissions to utility companies.

FIELD AND DOCUMENT INVESTIGATION FOR DESIGN

- A. Field investigation and data collection including review of the City's, Utility Companies, and Caltrans as-built/record drawings, utility plat maps, Utility Company, and Caltrans coordination and any other information available for the project site.
 - i. CITY will provide, but cannot guarantee the accuracy of:
 - Available as-built plans
 - City Utility plat maps
 - ii. CONSULTANT to perform topographic survey as applicable including, but not limited to:
 - Establish horizontal and vertical control and datum based on City's Benchmark system.
 - At grade utilities structures
 - All existing structures and hardscape
 - Street monuments
 - iii. CONSULTANT to perform record research along with field data collection to provide a record boundary and/or easement locations.
 - iv. CONSULTANT shall verify locations of existing underground utility structures in field, and all "as-built" plans provided by the City.
 - v. Aerial photos to be used as a base for the design with major landmarks and buildings identified.

PS&E (30%, 60%, 90% and Final Drawing)

- A. The CONSULTANT shall prepare bid documents, including specifications, drawings, and construction cost estimates within the CITY's budget and design in compliance with Public Contracts Code for a Public Works Project.

- B. The CONSULTANT shall provide PDF file of specifications, design drawings, construction cost estimate, and schedule updates for 30%, 60% and 90% PS&E submittals.
- C. For each phase of design, the consultant shall respond to and incorporate the CITY's comments with a written response to each comments provided. CONSULTANT shall schedule a minimum of three weeks for City review of each submittal.
- D. The CONSULTANT shall incorporate all the comments provided by the CITY into their final PS&E. The CONSULTANT shall provide digital copies of final PS&E in both PDF file and native document format (AutoCAD, Excel, Word, Power Point, etc...) and shall provide two (2) full size set and specifications, wet stamped and signed for bidding purposes.

Sheets that shall be included, but not limited to, in the Construction Drawings:

- i. Cover Sheet including General Notes, Legend and Abbreviation, Site Map, Sheet Index etc.
 - ii. Construction Plan and Details
 - iii. Pavement construction plan
 - iv. Striping Plan and details
 - v. Blueprint for a clean bay (City to provide)
- E. The CONSULTANT shall prepare Construction Drawings using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet. (City to provide title block in AutoCAD)
 - F. These plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/4" = 1' for structural plans.
 - G. The CONSULTANT shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention, Storm water Treatment Requirements "C.3" and Erosion Control guidelines as applicable. The CONSULTANT shall provide guidelines and technical specification section.
 - H. Project Specifications shall be prepared using the CITY's standard front-end document. (The CITY also has several Technical Specification Sections which are standardized that may be used on the project.) If CONSULTANT uses the CITY provided technical sections the CONSULTANT shall assume design responsibility for specifications. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, CSI format. The technical specifications shall be coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: California Building Code, Title 24, ADA, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of a the necessary Permits. The specifications shall include measurement and payment wording. The CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet.
 - I. The CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. Estimate shall be provided in both Excel and PDF format.
 - J. The construction schedule shall be specified in calendar days as approved by the CITY.

BID SUPPORT

- A. CITY will be responsible for advertisement of the project. CONSULTANT shall assist CITY during bid solicitation process which may include responding to questions from potential bidders, attending pre-bid conference and job walk. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following; response to bidders' inquiries, preparation of addenda, attend and assist at pre-bid meeting, evaluation of bids.
- B. Upon completion of bidding, consultant shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda ready to issue for contract award and construction. CONSULTANT shall submit two (2) signed conformed sets of contract documents hard copies and one electronic copy on CD in Auto CAD, MS Word and PDF formats.

ADDITIONAL SERVICES

- A. CONSULTANT shall provide a 15% Additional Service Budget. The City will provide written direction and authorization prior to beginning any additional services.

REIMBURSABLES

- A. Provide a reimbursable budget for printing, reproduction, and delivery services.

III. Milestone Schedule

Some scheduled dates provided are preliminary and are guidelines for the consultant to provide a proposal. Consultant shall provide a preliminary schedule with their proposal that shall meet the City's milestones.

Request for Proposals Issued	April 23, 2019
Questions regarding RFP due	May 2, 2019 @ 4:00 PM
Addenda Issued	May 6, 2019
Proposals due	May 17, 2019 @ 2:00 PM
Evaluation of Proposals	
Design Contract Award (City Council)	June 18, 2019
Design Kick Off	July 8, 2019
PS&E Completed for Bidding	December 6, 2019
Request for Authorization Construction	December 20, 2019
Receive E-76	January 20, 2020
Construction Advertisement	January 31, 2020
Bid Opening	February 28, 2020
Construction Contract Award (City Council)	April 7, 2020
Construction Kick Off	April 28, 2020

ATTACHMENT B – SAMPLE COST PROPOSAL FORMAT**RFP No. 4296 – STREET RESURFACING 2019****ATTACHMENT B
Sample Cost Proposal Format**

Item No.	Item Description/Title	Personnel #1	Personnel #2	Total Cost
		Rate #1	Rate #2	
1	Project Administration & Coordination			
2	Field and Document Investigation for Design			
3A	30% PS&E			
3B	60% PS&E			
3C	90% PS&E			
3D	Final PS&E			
4	Bid Support			
5	Construction Support			
6	Record Documents & Project Closeout			
Subtotal:				

Additional Services as needed
(15%)

Reimbursables

Total Proposal Cost:

Total Base Proposal Price (in words):

Proposal items are not intended to be exclusive descriptions of work categories. The consultant shall determine and include, but is not limited to, the pricing of all, project management, non-standard work time allowances, permitting, coordination, weekly progress meetings with the city, and all other work necessary to complete the project. Payment for all proposal items shall be on a lump sum basis. Proposer may also propose additional tasks that the proposer deems essential to adequately provide the services requested in this RFP.

ATTACHMENT C – SAMPLE DESIGN SERVICES AGREEMENT

RFP No. 4296 – STREET RESURFACING 2019

[AGREEMENT FORM ATTACHED BEHIND THIS PAGE]

**CITY OF MILPITAS
DESIGN SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into as _____, 20____ by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and *****INSERT NAME*****, a *****INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***** with its principal place of business at *****INSERT ADDRESS***** (hereinafter referred to as "Designer"). City and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Designer. Designer desires to perform and assume responsibility for the provision of certain professional design services required by the City on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

2.3 Project. City desires to engage Designer to render such services for the **INSERT PROJECT NAME** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Designer.

3.1.1 Scope of Services. Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld. **INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE:** Additionally, Designer shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I.]"

3.1.2 Term. **Insert start date** to **Insert end date**, unless earlier terminated as provided herein. **[If engaging the Designer for a particular term, use the following provision]**

The term of this Agreement shall be from **Insert start date** to **Insert end date**, unless earlier terminated as provided herein. The City reserves the right to review the Designer's performance at the end of each year and cancel all or part of the Agreement. The City reserves the right to extend this Agreement for four (4) one (1) year options exercisable at the City's sole discretion, not to exceed five (5) years in total. The City may exercise the renewal option years by written notice to the Designer by US Mail, fax or email, including a Purchase Order, sent no later than the last day of the current term. If a renewal option is exercised and/or a price increase is granted it will be transmitted to the Designer using the Notice of Exercise of Option to Extend Agreement Term attached hereto as Exhibit "E".

[If engaging the Designer to perform a discrete task with a specified deadline, use the following provision]

Designer shall perform its services in a prompt and timely manner and shall commence performance upon the Effective Date. Designer shall complete the services required hereunder within **[Insert number of calendar days for performance of the services.]**

3.2 Project Designer; Key Personnel.

3.2.1 Project Designer. Designer shall name a specific individual to act as Project Designer, subject to the approval of City. Designer hereby designates **[INSERT NAME OF INDIVIDUAL DESIGNER]** (License No. **[INSERT NUMBER]**) to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Designer cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Designer, Designer has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the City. In the event that City and Designer cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the City. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: **[INSERT NAMES, AND TITLES OF KEY PERSONNEL, AND LICENSE NUMBERS, IF APPLICABLE]**.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Designer shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Designer's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and City.

3.5.3 Americans with Disabilities Act. Designer will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Designer's failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) Damages: City may seek damages from Designer for delay in completing the Services caused by Designer's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Designer on an independent contractor basis and Designer is not an employee of City. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of City, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Designer agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Designer cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of City. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the City nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer

for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Designer Services.

3.8.1 Request for Services. At City's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Designer as to the compensation to be paid for such services. City shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations,

objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Designer with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, City shall furnish Designer with, or direct Designer to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. The City Manager hereby designates **[INSERT NAME AND TITLE]**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Designer shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Designer's Compensation for Basic Services. City shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **[INSERT WRITTEN AMOUNT]** Dollars (\$**[INSERT NUMERICAL AMOUNT]**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 **[**IF AN MULTI YEAR AGREEMENT USE FOLLOWING CLAUSE IF PRICE ADJUSTMENTS ARE ALLOWED OTHERWISE DELETE ENTIRE CLAUSE**]** Adjustments to Compensation. All prices shall remain fixed for the initial term. Eligibility for price adjustments occurs at each renewal period when an option is exercised to extend the Agreement, provided the Designer requests the change in writing by US Mail or email to the Purchasing Agent not less than ninety (90) days prior to the anniversary date of the agreement. Prices quotes may remain the same, or be increased or decreased in direct proportion to the change in the Consumer Price Index (CPI) for All Urban Consumers, Series ID: CUURS49BSAO, Not Seasonally Adjusted, San Francisco – Oakland – Hayward, Ca, All Items, Base period 1982-84=100 for the month of **[***MONTH***]** as reported by the Bureau of Labor Statistics of the U. S. Department of Labor. The base index shall be the **[***MONTH***]** **[***YEAR***]** bi-monthly index. Subsequent price changes shall be based on the

*****MONTH***** *****YEAR***** bi-monthly index compared to the *****MONTH***** *****YEAR***** bi-monthly index. Change in prices shall not exceed a maximum total of five percent (5%).

3.10.3 Payment for Additional Services. At any time during the term of this Agreement, City may request that Designer perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.4 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000.00; and (5) other costs, fees and expenses in excess of \$1,000.00.

3.10.5 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.10.6 Withholding Payment to Designer. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses,

liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.10.7 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Designer and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.10.8 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Designer and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Designer shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.10.9 Labor Compliance. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Designer or any subcontractor that affect Designer's performance of Services, including any delay, shall be Designer's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Designer caused delay and shall not be compensable by the City. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Designer or any subcontractor.

3.11 Notice to Proceed.

Designer shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Designer's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Designer. Designer hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Designer may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Designer as provided in this Agreement.

3.12.2 City's Suspension of Work. If Designer's Services are suspended by City, City may require Designer to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Designer.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Designer shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Designers. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Designer or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to City copies of all Project Documents required by City. In addition, Designer shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Designer grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Designer, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and

use;

City is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Designer shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Designer shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Designer, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Designer's obligation to defend, indemnify, and/or hold harmless arises out of Designer's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Designer's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Designer, and, upon Designer obtaining a final adjudication by a court of competent jurisdiction, Designer's liability for

such claim, including the cost to defend, shall not exceed the Designer's proportionate percentage of fault.

3.15 Insurance. Designer shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Designer shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required therein.

3.16 Records.

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Designer shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for design services between City and the designer chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Designer shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Santa Clara County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.27 Safety.

Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Designer shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Designer shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Designer's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: *****INSERT NAME & DEPARTMENT*****

CONSULTANT:

*****INSERT NAME, ADDRESS & CONTACT PERSON*****

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Designer warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Wage Theft Certification.

3.35.1 Designer, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

3.35.2 BY SIGNING THIS AGREEMENT, DESIGNER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT DESIGNER OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. DESIGNER FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, DESIGNER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT DESIGNER OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3.35.3 If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Designer or a subconsultant

it employs to perform work under this Agreement has violated any applicable wage and hour law, or Designer learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Designer shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Designer or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Designer or its subconsultant is subject to a payment or other alternative plan, the Designer or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.35.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

3.35.5 Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

3.35.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

3.36 Subcontracting.

As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.37 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.38 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND [***INSERT DESIGNER NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

[*INSERT DESIGNER NAME***]**

[INSERT NAME]
[INSERT TITLE]

Signature

Name

Date

Approved As To Form:

Title

Christopher J. Diaz
City Attorney

Date

EXHIBIT "A"
DESIGNER'S SCOPE OF SERVICES
1. GENERAL REQUIREMENTS.

1.1 Basic Services. Designer agrees to perform all the necessary professional design, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: **[INSERT IF APPLICABLE] [COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.]**

1.3 Additional Services. Designer shall perform the following Additional Services for the Project: **[INSERT ADDITIONAL SERVICES OR "N/A" IF NOT APPLICABLE]**

1.4 Communication with City. Designer shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Designer shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Designer will be fully aware of the duties and responsibilities of the construction manager. The Designer shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Designer shall request clarification from the City in writing if the Designer should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Designer shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Designer shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Designer to design the Project within budget. As discussed

herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Designer may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Designer shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Designer shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Designer shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed design concept of the buildings ("Schematic Plans"). Designer shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All design drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Designer shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Designer's Preliminary Project Budget"). The purpose of the Designer's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Designer perceives site considerations which render the Project expensive or cost prohibitive, Designer shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Designer may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget. Designer shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Designer, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Designer with specific written approval of the Schematic Plans described herein, Designer shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Designer, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Designer shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Designer's Updated Project Budget").

4.4 Timetable. Designer shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Designer shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Designer shall furnish and process all design and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Designer shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Designer with specific written approval of the Design Development Documents described herein, Designer shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Designer with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Designer will make a good-faith effort to verify the accuracy

of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Designer which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Designer and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Designer.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Designer's professional judgment. Designer shall bring any such conflicts and/or inconsistencies to the attention of City. The parties agree that Designer, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent designer or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Designer shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Designer's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Designer shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Designer that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Designer's fees. Should it become evident that the total construction cost will exceed the specified sum, Designer shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Designer, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Designer shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Designer shall provide City with its final estimate of probable construction cost ("Designer's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Designer's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Designer with specific written approval of the Construction Documents and Designer's Final Estimate, Designer shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Designer shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Designer's Final Estimate by more than five percent (5%), City may request Designer to amend, at Designer's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Designer's Final Estimate. All revisions necessary to bring the lowest responsive and responsive bid within the Designer's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Designer shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Designer.

8.2 General Administration. Designer shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Designer shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested parties.

8.4 Site Visits of Contractor's Work. Designer shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Designer shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Designer and City. Designer shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Designer's Consultants. Designer shall cause all architects, engineers and other consultants, as may be hired by Designer or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Designer shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Designer shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Designer shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Designer shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Designer shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Designer shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Designer shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Designer's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Designer shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Designer shall immediately notify the City and contractor(s) of such rejections. Designer shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Designer shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Designer's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Designer shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Designer shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Designer shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Designer shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Designer shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Designer's approval, or submit them to the City with recommendations for revision or denial if necessary. Designer shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Designer may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Designer shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Designer shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Designer shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Designer shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Designer shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Designer shall also notify City of all Punch List Items.

8.21 Warranties. Designer shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors

and subcontractors pursuant to the Construction Documents. Designer shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Designer shall participate in any further inspections of the Project necessary to issue Designer's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Designer shall cause all other architects, engineers and other consultants, as may be hired by Designer, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Designer shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Designer shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Designer shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Designer by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Designer with specific written approval of the As-Built Drawings and Specifications, Designer shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Designer's final payment, Designer shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Designer's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Designer shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES
11. FEE SCHEDULE.

Designer will invoice City on a monthly cycle based on the following fee schedule. Designer will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Designer will inform City regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from City.
[Insert fee schedule]

12. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%)_____
Schematic Plan Phase:	_____ percent (%)_____
Design Development Phase:	_____ percent (%)_____
Final Working Drawings & Specifications Phase:	_____ percent (%)_____
Construction Contract Documents Phase:	_____ percent (%)_____
Bid Phase:	_____ percent (%)_____
Construction Phase:	_____ percent (%)_____
As-Built Drawings Phase:	_____ percent (%)_____
Warranty Period Phase:	_____ percent (%)_____

EXHIBIT "C"

COMPENSATION RATES AND REIMBURSABLE EXPENSES

13. HOURLY COMPENSATION RATES.

[INSERT DESIGNER'S HOURLY RATES]

14. REIMBURSABLE EXPENSES.

[INSERT AUTHORIZED REIMBURSABLE EXPENSES]

15. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

16. ADDITIONAL CONSULTANTS.

If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer's actual hourly rates plus **[INSERT AMOUNT OR PERCENTAGE]**. Owner shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "D"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Designer's Agreement.

Designer shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Designer, its agents, representatives, employees or subcontractors.

Designer shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Designer shall furnish City with copies of original endorsements affecting coverage required by this Exhibit **[**LIST EXHIBIT LETTER**]**. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Designer's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

 X Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

 X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Designer has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

 Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

 Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Designer, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

 X Insurance appropriate to the Designer's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

 (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

 Insurance appropriate to the Designer's profession, with limit no less than per occurrence or claim, aggregate

Workers' Compensation Insurance:

 X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Designer provides written verification it has no employees)*

The Designer makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Designer Signature

Builder's Risk (Course of Construction):

 Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

 Designer shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Designer's Pollution Legal Liability:

____ Designer's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Designer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Designer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Designer or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Designer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Designer's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

X Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Designer's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Designer's insurance and shall not contribute with it.

____ Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Designer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

__X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

__X__ Waiver of Subrogation:

Designer hereby grants to City a waiver of any right to subrogation which any insurer of said Designer may acquire against the City by virtue of the payment of any loss under such insurance. Designer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Designer, its employees, agents and subcontractors.

__X__ Completed Operations

For Construction Agreements, Designer shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Designer fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Designer.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Designer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Designer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Designer must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Designer’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Designer’s Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Designer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Designer shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Designer and City in the same manner and to the same extent as Designer is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Designer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Designer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Designer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

EXHIBIT "E"

NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT TERM

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(Date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section ____ of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

☐ CHANGES IN RATE OF COMPENSATION

Percentage change in ____ Index upon which adjustment is based:	
--	--

Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(Use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Designer an amount not to exceed the amount set forth above for Designer's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF MILPITAS
a municipal corporation

CONTRACTOR
(Insert Name)

By _____

By _____

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative:

Title of Authorized Representative